

**ROOT CREEK WATER DISTRICT  
MINUTES OF BOARD OF DIRECTORS' NOVEMBER 10, 2011 MEETING**

Root Creek Water District (RCWD or the District) held a special meeting on Thursday, November 10, 2011, at the office of Baker Manock & Jensen located at 5260 North Palm Avenue, Fourth Floor, Fresno, California.

**DIRECTORS PRESENT:** Philip R. Pierre – President  
Jeffrey D. Coulthard  
Rodger B. Jensen  
Timothy Jones  
Laura Whitaker (by phone)

**DIRECTORS ABSENT:** L. Dave Cobb

**OTHERS PRESENT:** Christopher L. Campbell – General Counsel  
James Provost – District Engineer  
Deborah Messer Branche – Secretary, Treasurer  
Carl Janzen -- Director, Madera Irrigation District

1. **PUBLIC HEARING** - The meeting was called to order by President Pierre at 9:07 a.m. President Pierre asked if there were any members of the public present for the Public Hearing. Carl Janzen, Director of Madera Irrigation District, was present. President Pierre then opened the Public Hearing to determine if the District should prepare and plan to adopt a new Groundwater Management Plan (GWMP). Counsel and President Pierre explained that the RCWD adopted a GWMP on October 13, 1997. The District has taken all actions necessary to comply with the 1997 plan, however, there have been several changes in the standards that are not in the 1997 plan. The GWMP, therefore, needs to be revised to incorporate all the information that the RCWD has compiled since 1997 and to comply with the new guidelines. The costs for preparing the new GWMP, including public outreach, notifications and revisions to the plan are estimated to be \$30,000, plus minor legal expenses. There were no comments from the public. The Public Hearing was closed at 9:15 a.m.

2. There being no comments regarding the intended new GWMP, upon motion by Director Coulthard, seconded by Director Jones, the Board unanimously voted to adopt

**Resolution 2011-10** intending to draft a new Groundwater Management Plan and authorizing Provost & Pritchard, Inc. to prepare a new Groundwater Management Plan for the District.

3. Counsel and President Pierre presented an amendment from Provost & Pritchard for consulting services regarding the pipeline project implementation and for the scope of work preparing a new Groundwater Management Plan. The costs for preparing the new GWMP, including public outreach, notifications and revisions to the plan are estimated to be \$30,000, plus minor legal expenses. Upon motion by Director Jensen, seconded by Director Coulthard, the Board unanimously adopted

**Resolution 2011-11** consenting to the attached Amendment 1 to Consultant Services Agreement with RCWD for Pipeline Project Implementation and authorizing President Pierre to sign the Amendment.

4. Counsel reviewed a funding agreement between the District and Gateway Village Development, LLC (Gateway) for construction of the pipeline project. The proposed agreement provides that Gateway will advance funds when needed, including the matching funds for the DWR grant, to construct the water supply pipeline from MID Lateral 6.2 into the District. The agreement also provides that RCWD will provide a credit to Gateway against future fees owed by Gateway to the District. Should Gateway advance funds in excess of their pro rata share of the benefit of the pipeline, the District will reimburse Gateway from funds collected from other landowners as they pay their pro rata share of the costs. The agreement follows standard public agency practice which allows landowners within a district to advance funds for necessary capital costs to serve their property in exchange for a credit against fees owed by the landowner to the district. Upon motion by Director Whitaker, seconded by Director Coulthard, the Board adopted


**Resolution 2011-12** consenting to the attached Funding Agreement between RCWD and Gateway and authorizing President Pierre to sign the Funding Agreement. The Resolution was passed with four affirmative votes. Director Jones abstained from the discussion and the vote although he was available to answer questions addressed to Gateway.

5. **ADJOURNMENT** -- There being no further business to come before the Board, President Pierre adjourned the Board of Directors meeting at 9:32 a.m.

Respectfully submitted,

  
Deborah Messer Branche

Approved:

  
Philip R. Pierre, President

ROOT CREEK WATER DISTRICT  
RESOLUTION NO. 2011- 10

Whereas ROOT CREEK WATER DISTRICT (“RCWD” or the “District”) previously adopted a Ground Water Management Plan prepared on October 13, 1997 (“1997 GWMP”).

Whereas RCWD has taken all actions necessary to comply with the 1997 GWMP, including regularly collecting data.

Whereas the 1997 GWMP needs to be revised to incorporate all the information that the District has compiled since 1997 and to comply with the best management practices.

NOW, THEREFORE, BE IT RESOLVED that:

1. The above recitals are true and correct.
2. RCWD intends to draft a new Groundwater Management Plan.
3. RCWD authorizes Provost and Pritchard, Inc. to prepare a new Groundwater Management Plan for the District.
4. The Resolution shall take effect immediately.

ADOPTED this 10th day of November, 2011.

<u>Vote</u>	<u>Yes</u>	<u>No</u>
Philip Pierre	<u>✓</u>	<u>—</u>
Jeffrey D. Coulthard	<u>✓</u>	<u>—</u>
Rodger Jensen	<u>✓</u>	<u>—</u>
Timothy Jones	<u>✓</u>	<u>—</u>
Laura Whitaker	<u>✓</u>	<u>—</u>
L. Dave Cobb	<u>ABSENT</u>	<u>—</u>

ROOT CREEK WATER DISTRICT  
RESOLUTION NO. 2011- 11

Whereas ROOT CREEK WATER DISTRICT (“RCWD” or the “District”) plans to prepare and consider adopting a new Ground Water Management Plan.

Whereas, pursuant to Resolution No. 2011-\_\_ adopted November 10, 2011, RCWD has authorized Provost and Pritchard, Inc. to prepare a new Groundwater Management Plan for the District.

Whereas Provost and Pritchard request Amendment 1 To Consultant Services Agreement with Root Creek Water District for Pipeline Project Implementation to authorize additional funding for Provost & Pritchard to prepare the new Groundwater Management Plan for RCWD's consideration.

NOW, THEREFORE, BE IT RESOLVED that:

1. The above recitals are true and correct.
2. RCWD consents to the attached Amendment 1 To Consultant Services Agreement with Root Creek Water District for Pipeline project implementation.
3. RCWD authorizes its President to sign Amendment 1.
4. This Resolution shall take effect immediately.

ADOPTED this 10th day of November, 2011.

Vote	Yes	No
Philip Pierre	<u>✓</u>	___
Jeffrey D. Coulthard	<u>✓</u>	___
Rodger Jensen	<u>✓</u>	___
Timothy Jones	<u>✓</u>	___
Laura Whitaker	<u>✓</u>	___
L. Dave Cobb	<u>ABSENT</u>	___

**Amendment 1**

**To Consultant Services Agreement with  
Root Creek Water District  
for  
Pipeline project implementation**

**Scope of Work for preparation of  
Groundwater Management Plan**

**Background**

Completed existing groundwater management plan. Plan adoption dated October 1997 and to now be eligible for grant funds these plans must be in compliance with SB 1938.

**Work will include**

1. Updating the GMP to be compliant with mandatory and voluntary components in Senate Bill 1938, and other components recommended by DWR.
2. Addressing the existing proposed in-lieu project, and ensuring that the goals, objectives and policies in the GMP are consistent with the project.
3. Prepare GMP based on questions in grant applications (especially AB303) so that it can score as high as possible on future grant applications.

**New Sections Needed**

To be compliant with Senate Bill 1938 the following new sections are needed:

- Basin Management Objectives
- Monitoring Protocols
- Groundwater Advisory Committee
- Periodic Groundwater Reports
- Periodic Re-Evaluation of GMP
- Surface Water Monitoring
- Land Surface Subsidence Monitoring
- Water Conservation and Education
- Water Recycling
- Dispute Resolution
- Monitoring Well Location Map
- Monitoring Well Attributes Table
- Documentation of Public Involvement

A more thorough listing of the specific requirements is included as Attachment 1.

In addition, most of the existing sections need updating or expansion. These sections include:

- Hydrogeologic Characteristics
- Groundwater Conditions
- Control of Saline Water Intrusion
- Identification and Management of Wellhead Protection Areas and Recharge Areas
- Regulation of the Migration of Contaminated Groundwater
- Administration of a Well Abandonment and Well Destruction Program
- Mitigation of Conditions of Overdraft
- Groundwater Replenishment
- Monitoring of Groundwater Levels and Storage
- Conjunctive Use
- Well Construction Policies
- Construction and Operation of Groundwater Facilities
- Relationships with Agencies
- Land Use Planning
- Funding
- Program Components (Plan Implementation)
- Implementation Schedule

### **Tasks for review with Phil**

1. Attend kickoff meeting to discuss specific programs and goals
2. Provide overall editorial review
3. Provide information/data from District files/records
4. Solicit letters of support from growers/neighboring agencies
5. Form and attend meetings of Groundwater Advisory Committee
6. Perform public participation requirements (Board meetings)
7. Possibly write some sections of document (to be determined at kickoff meeting)
8. Review final document and provide comments

### **Cost**

It is estimated that the cost for preparing the documents associated with the public outreach, notifications and revisions to the plan could approximate \$30,000. It may be possible to reduce the effort and limit the work to those items that are specifically required in SB 1938. To this end we propose a time and materials budget so that if this can be realized the actual costs to complete this work can be less than budgeted..

### **Benefits**

1. Requirement for many grant and loan programs
2. Quality of GMP has large impact on scoring for some grant programs
3. Can be a useful reference document
4. Helps district establish future groundwater management goals
5. May be needed for implementing other programs

### **Assumptions**

1. Minimal GIS Work (assume we have most of the required maps)
2. RCWD will pay all publishing costs

**References**

1. October 1997 Groundwater Management Plan
  2. Proposition 13 grant Application
- Accepted by:



\_\_\_\_\_  
Phil Pierre, President Root Creek Water District

11/10/11

\_\_\_\_\_  
Date



11/10/11

\_\_\_\_\_  
Date

ROOT CREEK WATER DISTRICT  
RESOLUTION NO. 2011-12

Whereas RCWD has obtained grant funding through the Madera Region Regional Water Management Group for construction of a pipeline and related improvements to bring water from the Madera Irrigation District Lateral 6.2 to allow RCWD to import surface water into the District.

Whereas the terms of the grant require RCWD to provide matching funds and RCWD will require temporary funding to timely pay for construction costs pending receipt of reimbursement from the grant funding.

Whereas Gateway has agreed to advance the matching fund amount to RCWD when necessary to satisfy the grant requirements and to advance additional amounts of temporary funding to RCWD as necessary pursuant to the terms set forth in the proposed Funding Agreement attached.

Whereas the funding agreement follows the standard public agency practice of landowners within a water district advancing funds for necessary capital costs to serve their property in exchange for a credit against fees owing by the landowner for connection and other charges.

NOW, THEREFORE, BE IT RESOLVED that:

1. The above recitals are true and correct.
2. RCWD consents to the attached Funding Agreement between RCWD and Gateway.
3. RCWD authorizes its President to sign the Funding Agreement.
4. This Resolution shall take effect immediately.

ADOPTED this 10th day of November, 2011.

Vote	Yes	No
Philip Pierre	<u>✓</u>	<u>   </u>
Jeffrey D. Coulthard	<u>✓</u>	<u>   </u>
Rodger Jensen	<u>✓</u>	<u>   </u>
Timothy Jones	<u>ABSTAIN</u>	<u>   </u>
Laura Whitaker	<u>✓</u>	<u>   </u>
L. Dave Cobb	<u>ABSENT</u>	<u>   </u>



**Funding Agreement**  
(Gateway Village, LLC—RCWD)

This Funding Agreement is entered into this 14<sup>th</sup> day of November, 2011 by and between Root Creek Water District, a California Water District ("RCWD" or the "District") and Gateway Village, LLC a California corporation ("Gateway").

RECITALS

A. RCWD desires to construct a pipeline and related improvements to bring water from the Madera Irrigation District Lateral 6.2 to allow RCWD to import surface water into the District (the "Pipeline").

B. RCWD has obtained grant funding from the California Department of Water Resources through the Madera Region Regional Water Management Group for construction of the Pipeline. The terms of the grant funding require that RCWD provide matching funds in the approximate amount of \$1,375,000.00. In addition, because the grant funding only provides reimbursement for amounts spent on the Pipeline, RCWD requires temporary funding, in an as yet undetermined amount, to timely pay Pipeline construction costs pending receipt of reimbursement from the grant funding.

C. Gateway is a landowner within RCWD that desires to have water supplies imported into RCWD through the Pipeline. Gateway will directly benefit from the imported water supplies and therefore, Gateway desires to provide funding as necessary for construction of the Pipeline in exchange for credit against amounts owing to RCWD in accordance with standard policy.

NOW THEREFORE, the parties hereto agree as follows:

1. **Payment of Matching Funds.** Gateway agrees to advance the matching fund amount to RCWD, promptly upon demand, when necessary to satisfy the grant requirements.
2. **Advance of Temporary Funding.** Gateway agrees to advance additional amounts of temporary funding to RCWD for the Pipeline construction as necessary to maintain a reasonable and efficient construction schedule. All temporary funding shall be promptly reimbursed by RCWD upon receipt of reimbursement from the grant funds for the amounts advanced.
3. **Additional Costs.** Should the Pipeline construction exceed the budgeted costs, then RCWD shall obtain other funding, or additional advances from Gateway, prior to authorizing any additional work in excess of the budget.
4. **Reimbursement for Matching Funds.** The parties agree that RCWD shall reimburse Gateway for advancing the matching funds (and any additional funds should the Pipeline project exceed the budget) in two ways. First, Gateway shall be entitled to utilize the

full amount of the funds advanced (with reasonable interest) as a credit against any connection or other capital cost fees to RCWD that Gateway incurs. Second, to the extent that Gateway advances funds in excess of its pro rata share of the benefit of the Pipeline, RCWD shall be obligated to reimburse Gateway from funds collected from other landowners as they pay their share of the pipeline costs through RCWD connection fees and other charges.

5. **Representations and Warranties.**

a. RCWD represents and warrants that it shall diligently comply with all grant funding requirements, it will promptly give notice to Gateway of all requirements, and it will properly supervise the Pipeline construction.

b. Gateway represents and warrants that it will maintain cash reserves sufficient to provide all funding agreed to in this Funding Agreement promptly upon receipt of a funding request from RCWD.

6. **Attorneys' Fees.** In the event of any controversy, claim or dispute between the Parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the other Party reasonable expenses, attorneys' fees and costs.

7. **Notices.** All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Section 7. The addresses noted below shall be that Party's address for delivery or mailing of notices.

To RCWD: Root Creek Water District  
C/O Deborah Messer Branche  
1396 W. Herndon Avenue, Suite 108  
Fresno, California 93711

With copy to: Christopher L. Campbell, Esq.  
BAKER MANOCK & JENSEN, PC  
5260 N. Palm Avenue, Suite 421  
Fresno, California 93704  
Telephone: (559) 432-5400  
Facsimile: (559) 432-5620

To Gateway: Gateway Village, LLC.  
C/O Tim Jones  
265 E. River Park Place, Suite 310  
Fresno, California 93720

Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, two (2) days after the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notice delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received after 5:00 p.m. in the time zone in which the Party is located or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

8. **Entire Agreement.** This Agreement and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

9. **Amendments.** No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of both Parties.

10. **Successors.** The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assignees of the respective Parties.

11. **Governing Law.** This Agreement and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California (without giving effect to any choice of law principles).

12. **Headings.** The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein.

13. **Counterparts.** This Agreement may be signed by the Parties in different counterparts, which together shall constitute one agreement, even though all Parties may not have signed the same counterpart.

14. **Severability.** If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

15. **Representation by Counsel.** Each Party acknowledges that it has been represented in this transaction by legal counsel and that they are fully informed as to the terms, conditions and covenants of this Agreement and the exhibits hereto.

16. **Time.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Funding Agreement on the dates specified with their signatures below:

GATEWAY VILLAGE, LLC

By: 

Name: Gateway Village Development, LLC

Title: By: Central Valley Development, LLC, Its Manager

By: Timothy Jones, Manager

Date: 11/14/2011

ROOT CREEK WATER DISTRICT

By: 

Philip Pierre, President

Date: 11/10/11